

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re:

Bk. No. 05-11379-JMD
Chapter 7

Universal Golf Construction Corp.,
Alleged Debtor

*Steven M. Notinger, Esquire
Donchess & Notinger, PC
Nashua, New Hampshire
Attorney for Movant*

*Cheryl C. Deshaies, Esquire
Joseph A. Foster, Esquire
Jennifer L. Parent, Esquire
McLane, Graf, Raulerson & Middleton, P.A.
Attorney for Alleged Debtor*

MEMORANDUM OPINION AND ORDER

I. INTRODUCTION

Following an evidentiary hearing on October, 3, 2005, the Court, on November 14, 2005, issued an Order (Doc. No. 73) (the “Dismissal Order”) denying Fred Ruland and FWR Partner’s Motion for Relief from Stay (Doc. No. 35), denying an ex parte Motion to Add Petitioning Creditors (Doc. No. 4), denying a second Ex Parte Motion to Add Petitioning Creditors (Doc. No. 5), and granting Debtor’s Motion to Dismiss the Case (Doc. No. 19). On November 23, 2005, Shining Rock Golf Community, LLC (“Community”) filed a Motion to Alter or Amend Judgment and/or for Relief from the Judgment (Doc. No. 77) (the “Motion”).

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the “Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire,” dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

II. BACKGROUND

The Motion was filed within ten days of the Court’s ruling. Accordingly, the Court will treat the motion as one filed under Federal Rule of Civil Procedure Rule 59(e), as it has been made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 9023. In order to be successful on a Rule 59(e) motion a moving party must establish a manifest error of law or fact or must present newly discovered evidence. Landrau-Romero v. Banco Popular de Puerto Rico, 212 F.3d 607, 612 (1st Cir. 2000).

The Motion seeks reconsideration on four issues:

1. whether the D.C. Blasting and Atlantic Trucking (the “Remaining Petitioning Creditors”) involuntary petition was filed in bad faith (“Issue One”);
2. whether the Court improperly placed the burden of proof on Community (“Issue Two”);
3. whether Community behaved as a reasonable person would have in filing the petition (“Issue Three”);
4. whether the new evidence on a verbal standstill agreement between Community and Universal Golf Construction Corp. (“Universal”) should be considered (“Issue Four”); and
5. whether the evidence supports the Court’s finding that Community paid the other petitioning creditors and thereby tainted the petition (“Issue Five”).

III. DISCUSSION

A. Issue One: Bad Faith

With respect to Issue One, Community asserts the Court's determination that the petition was filed in bad faith was predicated on the Court finding that the other two petitioning creditors were alter egos of Community. Community contends that it was a manifest error of law and fact for the Court to find alter ego status because no evidence in the record supports a finding that the Remaining Petitioning Creditors were pervasively controlled by Community.

Community misapprehends the extent of the Court's finding and ruling in paragraph R of the Dismissal Order. The Court did not find that the Remaining Petitioning Creditors were under such extensive control by Community that they were "alter egos" of Community for all purposes, only that "they joined the involuntary petition as the alter ego" of Community. The Remaining Petitioning Creditors were found to be the alter egos of Community in joining in the involuntary petition based upon the evidence at trial and the Court's findings and rulings based on that evidence. See paragraphs K, L, M and N of the Dismissal Order. Based upon the evidence presented, the Court found that the circumstances under which Community solicited and obtained the joinder of the Remaining Petitioning Creditors cause them to be alter egos of Community in that joinder and that the bad faith of Community would, therefore, be attributed to them. See paragraph T of the Dismissal Order.

B. Issue Two: Burden of Proof

Community contends that paragraph L of the Dismissal Order indicates that the Court improperly removed the burden of proving bad faith from Universal. Community is correct in its assertion that the burden of proving bad faith was on Universal. However, Community

misapprehends the import of paragraph L of the Dismissal Order. Based upon the evidence presented and as the Court stated in paragraphs L and M of the Dismissal Order, Universal had produced sufficient evidence from which the Court could find that Community acted in bad faith. At that point, the burden of producing evidence to rebut Universal's evidence shifted to Community. See Garritty v. Hadley (In re Hadley), 239 B.R. 433 (Bankr. D.N.H. 1999). Paragraph L states the Court's finding and ruling that Community failed to produce evidence sufficient to rebut evidence submitted by Universal, not that the ultimate burden of proof or persuasion was shifted from Universal to Community.

C. Issue Three: Reasonable Person

Community's arguments in support of Issue Three amount to nothing more than Community's view of the evidence submitted at trial. The Motion establishes that Community disagrees with this Court's findings and ruling on that evidence. Disagreement with the original ruling of the Court, without more, does not constitute grounds for altering or amending an order. Aybar v. Crispin-Reyes, 118 F.3d 10, 16 (1st Cir. 1997) quoting Moro v. Shell Oil Co., 91 F.3d 872, 876 (7th Cir. 1996) (Rule 59(e) allows a party to direct the trial court's attention to a manifest error of law or fact, not to present new arguments that could or should have been presented to the trial court before judgment). The Motion fails to establish any manifest error of law or fact with respect to Issue Three.

D. Issue Four: New Evidence

Community's fourth argument is that Universal's witness at trial did not tell the whole truth about the standstill agreement entered into between Community and Universal immediately before the involuntary petition was filed. Community contends that Universal violated the terms

of the standstill agreement, thereby terminating the agreement. Nothing in the Motion establishes, or even alleges, that this omission constitutes evidence not known to Community at the time of trial. Rule 59 does provide a vehicle for a party to seek to introduce new evidence that could have or should have been presented to this Court at trial. Id.; Schreiber v. Emerson (In re Emerson); 244 B.R. 41, 43 (Bankr. D.N.H. 1999).

E. Issue Five: Paid to Play

Finally, Community contends that the Court's finding and ruling in paragraph K of the Dismissal Order was a manifest error of fact. However Community's arguments do not point out any factual evidence ignored or overlooked by the Court. Community simply disagrees with the Court's conclusion on the evidence submitted at trial. Such disagreement is insufficient to justify alteration of or relief from the Dismissal Order. Aybar, 118 F.3d at 16.

IV. CONCLUSION

For the reasons set forth in this opinion, Community has failed to establish that the Court committed any manifest error of law or fact in reaching the findings and rulings contained in the Dismissal Order. This opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

Accordingly, the Motion is DENIED.

ENTERED and ORDERED at Manchester, New Hampshire.

Date: December 12, 2005

/s/ J. Michael Deasy
J. Michael Deasy
Bankruptcy Judge